
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

ZACH JOHNSTON; BARBIE JOHNSTON;
and ROES I-X,

Plaintiffs,

v.

INTERMOUNTAIN HEALTHCARE;
INTERMOUNTAIN NORTH OGDEN
CLINIC; MCKAY-DEE HOSPITAL; ASL
COMMUNICATIONS; and ROES I-X,

Defendants.

**MEMORANDUM DECISION AND
ORDER GRANTING MOTION
FOR SUMMARY JUDGMENT**

Case No. 1:18-cv-0003-DN-DBP

District Judge David Nuffer

Plaintiffs Zach and Barbie Johnston assert several claims against Defendants Intermountain Healthcare, Intermountain North Ogden Clinic, and McKay-Dee Hospital (collectively “Intermountain”) arising from multiple hospital visits at which the Johnstons allegedly requested, but were denied or refused accommodation for their hearing-impaired status.¹ Intermountain seeks summary judgment on the Johnstons’ claims arguing:

(i) the Johnstons’ claims based on events prior to March 22, 2017, are barred because the Johnstons did not disclose the claims in their prior bankruptcy proceedings;²

(ii) the Johnstons’ claims based on alleged conduct occurring before January 5, 2016, are time barred;³

¹ Second Amended Complaint, [docket no. 51](#), filed Nov. 28, 2018. The Johnstons’ Second Amended Complaint identifies Intermountain Healthcare, Intermountain North Ogden Clinic, and McKay-Dee Hospital as defendants. *Id.* However, the correct name is IHC Health Services, Inc., of which the named entities are dbas.

² Intermountain’s Motion for Summary Judgment at 21-24, [docket no. 100](#), filed Sept. 12, 2019.

³ *Id.* at 24-25.

(iii) the Johnstons' claims fail because the undisputed evidence demonstrates that Intermountain provided the Johnstons with effective communication;⁴

(iv) the Johnstons' claims seeking monetary damages fail because there is no evidence that Intermountain acted willfully or that the Johnstons suffered damages;⁵

(v) the Johnstons' professional negligence claim is barred because the Johnstons failed to provide the required notice and participate in pre-litigation procedures;⁶

(vi) the Johnstons' claim for injunctive relief is moot;⁷ and

(vii) the Johnstons lack standing to seek injunctive relief.⁸

The Johnstons' response to Intermountain's Motion for Summary Judgment was due October 10, 2019.⁹ The Johnstons failed to timely file a response. And to date, the Johnstons have not filed a response nor sought an extension of time to respond.

Pursuant to local rule, "[f]ailure to respond timely to a motion for summary judgment may result in the court's granting the motion without further notice, provided the moving party has established that it is entitled to judgment as a matter of law."¹⁰

Intermountain's Motion for Summary Judgment sets forth 80 undisputed material facts, which cite to record evidence.¹¹ These undisputed material facts support Intermountain's arguments and demonstrate that Intermountain is entitled to judgment on the Johnstons' claims as a matter of law.

⁴ *Id.* at 26-28.

⁵ *Id.* at 29-35.

⁶ *Id.* at 35-37.

⁷ *Id.* at 37-39.

⁸ *Id.* at 39-40.

⁹ DUCivR 7-1(b)(3)(A).

¹⁰ DUCivR 56-1(f).

¹¹ Motion for Summary Judgment at 4-21.

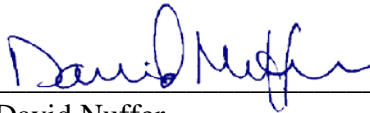
ORDER

THEREFORE, IT IS HEREBY ORDERED that Intermountain's Motion for Summary Judgment¹² is GRANTED. The Johnstons' claims against Intermountain¹³ are DISMISSED with prejudice.

The Clerk is directed to close the case.

Signed November 20, 2019.

BY THE COURT



David Nuffer
United States District Judge

¹² [Docket no. 100](#), filed Sept. 12, 2019.

¹³ Second Amended Complaint ¶¶ 49-107.